

BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
CHAIRMAN
BOB STUMP
COMMISSIONER
SANDRA D. KENNEDY
COMMISSIONER
PAUL NEWMAN
COMMISSIONER
BRENDA BURNS
COMMISSIONER

IN THE MATTER OF THE APPLICATION OF
LITCHFIELD PARK SERVICE COMPANY, AN
ARIZONA CORPORATION, FOR A DETERMINATION
OF THE FAIR VALUE OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN ITS
WASTEWATER RATES AND CHARGES FOR
UTILITY SERVICE BASED THEREON.

Docket No. SW-01428A-09-0103

IN THE MATTER OF THE APPLICATION OF
LITCHFIELD PARK SERVICE COMPANY, AN
ARIZONA CORPORATION, FOR A DETERMINATION
OF THE FAIR VALUE OF ITS UTILITY PLANTS AND
PROPERTY AND FOR INCREASES IN ITS WATER
RATES AND CHARGES FOR UTILITY SERVICE
BASED THEREON.

Docket No. W-01427A-09-0104

IN THE MATTER OF THE APPLICATION OF
LITCHFIELD PARK SERVICE COMPANY, AN
ARIZONA CORPORATION, FOR AUTHORITY (1) TO
ISSUE EVIDENCE OF INDEBTEDNESS IN AN
AMOUNT NOT TO EXCEED \$1,755,000 IN
CONNECTION WITH (A) THE CONSTRUCTION OF
TWO RECHARGE WELL INFRASTRUCTURE
IMPROVEMENTS AND (2) TO ENCUMBER ITS REAL
PROPERTY AND PLANT AS SECURITY FOR SUCH
INDEBTEDNESS.

Docket No. W-01427A-09-0116

IN THE MATTER OF THE APPLICATION OF
LITCHFIELD PARK SERVICE COMPANY, AN
ARIZONA CORPORATION, FOR AUTHORITY (1) TO
ISSUE EVIDENCE OF INDEBTEDNESS IN AN
AMOUNT NOT TO EXCEED \$1,170,000 IN
CONNECTION WITH (A) THE CONSTRUCTION OF
ONE 200 KW ROOF MOUNTED SOLAR
GENERATOR INFRASTRUCTURE IMPROVEMENTS
AND (2) TO ENCUMBER ITS REAL PROPERTY AND
PLANT AS SECURITY FOR SUCH INDEBTEDNESS.

Docket No. W-01427A-09-0120

RUCO'S EXCEPTIONS TO THE ROO - PHASE 2

A. Introduction

The Residential Utility Consumer Office ("RUCO") hereby submits its Exceptions to the Recommended Opinion and Order ("ROO"). RUCO's Exceptions relate to the discrete issue of the wording of Litchfield Park Service Company's Hook-up Fee ("HUF") tariff. LPSCO is owned by Liberty Water ("LPSCO" or "Company" or "Liberty Water"). By its tariff, Liberty Water proposes that HUF proceeds be recorded as CIAC and deducted from rate base only when expended on corresponding plant. This position is contrary to the Commission precedent including the Commission's most recent ruling on the issue. The ROO ignores the Commission's recent ruling in the matter of *Johnson Utilities*¹ refusing to adopt such tariff language and accords Liberty Water systems, different and special treatment not accorded any other Company in the State. RUCO sees nothing unique about Liberty Water that would justify the Commission's abandonment of its rules and precedent.

B. Approval of the Company's tariff is inconsistent with the long standing precedent of the Commission.

The Commission has historically rejected the Company's proposed methodology. In both the *UNS Gas* case (Decision No. 70011) and the *UNS Electric* case (Decision No. 70360),² the Commission rejected the same proposed methodology the Company is requesting here. In *H2O, Inc.* prior to this case and in *Johnson Utilities* subsequent to this matter, the water utilities requested the Commission delay deduction of unexpended CIAC and AIAC from rate base pending inclusion of offsetting plant.³ The Commission reaffirmed its prior rulings and required both *H2O, Inc.* and *Johnson Utilities* to deduct unexpended

¹ *In the Matter of Johnson Utilities*, Docket No. WS-02987A-08-0180.

² *UNS Gas*, Docket No. G-04204A-06-0463; *UNS Electric*, Docket No. E-04204A-06-0783.

1 advances from rate base. *Id.* In *H20, Inc* the Commission stated that granting the utility's
2 request would "confer special treatment that falls outside of the Commission's rules..."⁴
3 Just as in *H20, Inc*, Liberty Water has not advanced any compelling argument or factual
4 distinction to warrant a departure from normal rate-making treatment. The Commission
5 should not confer special treatment on Liberty Water in this case.

6 **C. HUF proceeds are CIAC.**

7 CIAC is CIAC and will always be CIAC. Trying to distinguish one type of CIAC from
8 another or the timing of its accounting treatment is simply unwise and will lead to nothing,
9 but confusion and inconsistent rate making. HUF proceeds are CIAC under NARUC's
10 Uniform System of Accounts ("USOA") for Class A Water Utilities:

11 271. Contributions in Aid of Construction

12 A. This account shall include:

- 13 1. Any amount or item of money, services or property
14 received by a utility, from any person or governmental
15 agency, any portion of which is provided at no cost to the
16 utility, which represents an addition or transfer to the
17 capital of the utility, and which is utilized to offset the
acquisition, improvement or construction costs of the
utility's property, facilities, or equipment used to provide
utility services to the public.⁵

18 The Company acknowledges that HUF proceeds are CIAC, but proposes they not be
19 deducted from rate base until expended on corresponding infrastructure. Neither the
20 Commission Rules nor the NARUC USOA requires third party payments to be expended on
21 infrastructure before being recorded as CIAC and deducted from rate base. The

23 ³ *H20 Inc.*, Docket No. W-02234A-07-0557, Decision No. 71414 at 5. See also *Johnson Utilities*, Docket No.
WS-02987A-08-0180.

24 ⁴ *Id.* at 8.

⁵ See R-1 Direct Testimony of William Rigsby at 10.

Commission's rule, A.A.C. R14-2-411.8 defines CIAC as "funds provided to the utility by the applicant under the terms of a main extension agreement and/or service connection tariff the value of which are not refundable." There is no condition precedent requiring third party funds to be expended on offsetting infrastructure prior to being deemed CIAC and deducted from rate base. Id. Based on NARUC and the Commission's rules, HUF proceeds are CIAC when received regardless of when expended.

D. NARUC USOA and the Commission's rules require test year CIAC be deducted from rate base.

Both the NARUC rule and the Commission's rule require test year CIAC to be deducted from rate base when received, not when expended. As Staff witnesses have testified innumerable times, the NARUC Staff Subcommittee on Accounting and Finance defines CIAC as "payments made by customers generally to fund plant additions for new and expanded service" and requires CIAC to be deducted from rate base because it is a source of non-investor supplied capital.⁶ Staff has consistently testified that NARUC USOA requires CIAC to be deducted upon receipt, but all parties acknowledge that each Commission addresses these issues as they deem fit. In Arizona, as Staff has previously testified, the Commission has adopted specific rules evidencing its preferred treatment which clearly requires test year CIAC to be deducted from rate base. Id. In adopting A.A.C. R14-2-103B the Commission requires all utilities to calculate rate base consistent with schedule B-1. In adopting Schedule B-1, the Commission clearly requires utilities to calculate total rate base by deducting test year CIAC from Net Utility Plant in Service

⁶ See Exhibit R-2 Surrebuttal Testimony of Crystal Brown ("Brown Test.") See also Transcript in *Bella Vista*, (BVT): 751, 753-757, citing to S-13 to Bella Vista Proceeding, NARUC Staff Subcommittee on Accounting and Finance. See Also *In the Matter of Johnson Utilities*, Docket No. WS-02987A-08-0180 and *UNS Gas*, Docket No. G-04204A-06-0463; *UNS Electric*, Docket No. E-04204A-06-0783.

(UPIS). *Id.* Moreover, the Commission has by rule defined Original Cost Rate Base (“OCRB”) as “**an amount consisting of the depreciated original cost**, prudently invested, **of the property (exclusive of contributions and /or advances in aid of construction) at the end of the test year**, used or useful, plus a proper allowance for working capital and including all applicable pro forma adjustments” (emphasis added). See A.A.C. R14-2-103H. The Commission has also evidenced its desire to deduct CIAC upon receipt in adopting the definition of Reconstructed New Rate Base (“RCND”) which mirrors the definition of OCRB as it relates to exclusion of test year CIAC and AIAC from rate base. See A.A.C. R14-2-103N. There is no provision in the Commission’s rules allowing a delay or deferral of CIAC deductions. Accordingly, test year CIAC is a deduction from net utility plant in service (“UPIS”) regardless of when it is expended on corresponding plant. Consistent with its rules, and its approved system of accounts, the Commission should reject the ROO to the extent that it recommends adoption of the Company’s proposed HUF tariff allowing test year CIAC be reduced from rate base only when it is expended on plant.

E. Approval of the Company’s proposal will result in a poor public policy.

Approval of the tariff as the Company proposes will result in bad public policy. RUCO’s witness, William Rigsby testified consistently with the long-held position of RUCO Staff and the Commission.⁷ He supported his position with specific references to the testimony of Staff’s witness in the *Bella Vista* case and the transcript of that proceeding.⁸ In *Bella Vista*, Staff testified that failing to deduct CIAC upon receipt creates a definite problem for Staff, RUCO or even the Company to follow or “chase CIAC.”⁹ Staff also testified that if there was a turnover in the personnel of the Company or Staff, plant could

⁷ T: 66-126.

⁸ T: 70-73.

1 be added without recognition of the unexpended CIAC, causing ratepayers to pay more
2 money in rates because of the Company's failure to include the offsetting deduction or
3 reduction to rate base. *Id.* Moreover, Staff testified that if Staff or RUCO are unable to
4 successfully chase or follow the unrecorded CIAC, the Company would end up with the
5 unjust benefit of earning a return on the assets that were paid for by others and ratepayers
6 would essentially pay twice: once through the hook-up fee and again through rates. *Id.*

7 The ROO follows the Commission's recent *Bella Vista* Decision¹⁰ allowing HUF to
8 be deducted when expended on corresponding plant. Bella Vista is another Liberty Water
9 system. The question is why did the Commission approve such a grave departure from its
10 historical treatment of CIAC for Liberty Water? More inexplicably, why would the Staff's
11 Utilities Director change course at the Open Meeting and reject his Staff's testimony and
12 its long-held position that all CIAC is deducted from rate base for a Liberty Water system?
13 The matter has become no clearer since. After *Bella Vista*, Staff reaffirmed its historical
14 approach in the *Johnson Utilities'* rate case on June 1, 2011.¹¹ On June 6, 2011, the
15 Commission's Staff filed testimony in this matter adopting the approach used in *Bella*
16 *Vista*.¹² Thereafter, in the fall of 2011, the Commission reviewed *Johnson Utilities'* request
17 for a similar tariff and which had the impact of reaffirming its historic position requiring
18 CIAC to be deducted upon receipt. Is this consistency – hardly? In all of this there is no
19 sense of gradualism, just confusion. The Commission should stop the CIAC policy merry-
20 go-round and put the matter to rest by reaffirming its historic treatment of CIAC as a
21 deduction from rate base upon receipt.

22
23 ⁹ T: 74-79. See also BVT: 757-758.

¹⁰ *Bella Vista*, Docket No. W-02465A-09-041 et al., Decision No. 72251 dated April 7, 2011.

24 ¹¹ See Exhibit R-3, Staff's Response to Petition to Amend Decision No. 71854, filed July 1, 2011 in *Johnson Utilities*, Docket Number WS-02987A-08-0180, Decision No. 71854 dated August 24, 2010

1 Failing to reaffirm the historical and regulatory mandated treatment of CIAC, will as
2 RUCO and Staff have consistently testified, make accounting errors a very real possibility.
3 The change adopted in *Bella Vista* is far less structured in its application than the
4 implementation of an adjustor mechanism – yet unbelievably, unlike a typical adjustor
5 mechanism there are no safeguards which have been established by the Commission by
6 rule or the Company in its tariff. Despite the safeguards associated with an adjustor
7 mechanism, the correct application and implementation of an adjustor mechanism is an
8 on-going challenge. The Commission has recently dealt with an incident where a
9 sophisticated water utility overlooked collection under an approved adjuster mechanism for
10 several years.¹³ Likewise, in *Johnson Utilities*, the utility's application of an approved
11 CAGRD adjustor mechanism resulted in an overpayment by ratepayers and significant
12 frustration for the Staff trying to calculate and recalculate the adjustor.¹⁴ There is no
13 question that the concerns of Staff and Mr. Rigsby may soon become a reality if the
14 Commission ignores the clear mandates of its rules and accords special privileges to
15 LPSCO. The stakes are too high and the risks too great for the Commission to endorse
16 a policy which violates its rules and approved system of accounts.

17 **F. Denial of the proposed tariff will not harm the Company.**

18 Denial of the proposed tariff does not harm the Company. The Company is ultimately
19 made whole. Any reduction in rate base the Company experiences up front will be
20 recovered on the back end. It is simply a matter of timing. The Commission's Rules as
21

22 ¹² See Exhibits S-1 and S-2, Direct Testimony of Marlin Scott and Jeffrey Michlik, respectively.

23 ¹³ *Arizona-American Water Company – Paradise Valley Water*, Docket No. W-01303A-98-0507, Decision
No. 72208 (March 3, 2011). See comments of Jodi Jerich dated October 11, 2011 in the matter of *Johnson*
Utilities, Docket No. WS-02987A-08-0180 attached hereto as Exhibit A.

24 ¹⁴ *Johnson Utilities*, Docket No. WS-02987A-08-0180. Decision No. 71854 dated August 24, 2010.

1 well as NARUC USOA require the Company to record CIAC upon receipt and reduce rate
2 base simultaneously without a corresponding entry in the PIS account. While rate base is
3 reduced if there is no corresponding PIS entry, it is definitely not a “penalty” as claimed by
4 the Company. When the Company uses the CIAC funds, it places the value of the plant
5 acquired in its PIS account. Once the CIAC is fully amortized, the PIS will still have value
6 and rate base will be higher than if CIAC and PIS were recorded simultaneously.¹⁵ The
7 Company’s assertion to the contrary is unfounded. The Commission should reject the
8 Company’s proposed HUF tariff.

9
10 **G. The Company has the ability to control timing to avoid any negative impact.**

11 The issue of when CIAC is deducted from rate base is only an issue during a rate
12 case. The Company is in control of when it files its rate application. Because the Company
13 controls the timing of its application, it can also time the application to avoid recording
14 CIAC before offsetting plant is constructed. A clear example of the Company’s power to
15 control the timing can be seen in this case. Mr. Sorenson testified that the Company
16 resolved a dispute with Westcor/Goodyear L.L.C and Globe Land Investors L.L.C.
17 (“Westcor/Globe”) in a parallel proceeding.¹⁶ The resolution reached during the test year
18 required Westcor/Globe to pay Liberty Water \$4.84 million dollars for expansion of service
19 of which approximately \$700,000 was subject to refund. Instead of taking receipt of the
20 funds due from Westcor/Globe during the test year, the Company had Westcor/Globe
21 place the funds in an escrow account on November 3, 2008, approximately 30-days post-
22 test year.¹⁷ The Company admits it withdrew the funds from the escrow account on or

23 ¹⁵ T: 74-75.

24 ¹⁶ *Westcor/Globe v. LPSCO*, Complaint Docket No. SW-01428A-08-0234.

¹⁷ R: 21-22.

1 about December 10, 2010, a few days after the Commission issued its order in Phase I.
2 The nonrefundable advances are CIAC, but were not deducted from rate base in the
3 current rate case. The Company's actions clearly demonstrate it already has the ability to
4 control the timing of its rate applications with receipt of CIAC and plant expenditures. The
5 Company has no need for the proposed tariff language.

6 The Commission needs to weigh the wisdom of approving the Company's request.
7 Liberty Water has already demonstrated itself to be capable of ensuring that CIAC is not
8 deducted from rate base until offsetting plant is included in PIS. The Commission does not
9 need to take an extraordinary action in contradiction to its rules and approved system of
10 accounts to help the Company with a non-existent problem.

11 **H. Conclusion**

12 The Commission's rules and approved system of accounts require HUF proceeds
13 be recorded as CIAC upon receipt without any condition precedent necessitating the funds
14 be expended on plant. RUCO urges the Commission not to apply the accounting
15 treatment of HUF accorded Liberty Water in *Bella Vista* to this rate case. The *Bella Vista*
16 approach violates the Commission's existing rules and approved system of accounts.
17 Approving such an accounting approach confers special benefits on Liberty Water and is
18 arbitrary, capricious and an abuse of discretion. RUCO believes the Commission should
19 treat its decision in *Bella Vista* as a "test case" to see how Staff and the utility track the
20 unrecorded hook-up fees. There is no harm in requiring Liberty Water to comply with the
21 traditional accounting treatment required by the Commission's rules. A utility which books
22 CIAC sooner gets the CIAC off its books quicker. The issue is a matter of timing and the
23 Company has demonstrated the ability to avoid rate base deductions by controlling the
24

1 timing of its rate application, the receipt of CIAC and the addition of offsetting plant. The
2 Commission may include a HUF tariff, but without the language allowing the Company to
3 delay recording or deducting test year CIAC from rate base. The Company has
4 demonstrated no need for such special treatment.

5 RESPECTFULLY SUBMITTED this 2nd day of November, 2011.

6
7
8

Michelle L. Wood
Counsel

9 AN ORIGINAL AND THIRTEEN COPIES
10 of the foregoing filed this 2nd day
of November, 2011 with:

11 Docket Control
12 Arizona Corporation Commission
1200 West Washington
13 Phoenix, Arizona 85007

14 COPIES of the foregoing hand delivered/
mailed or emailed this 2nd day of November, 2011 to:

15 Dwight D. Nodes, Asst. Chief
Administrative Law Judge
16 Hearing Division
Arizona Corporation Commission
17 1200 West Washington
Phoenix, Arizona 85007

18 Janice Alward, Chief Counsel
19 Legal Division
Arizona Corporation Commission
20 1200 West Washington
Phoenix, Arizona 85007

21 Robin Mitchell, Attorney
22 Kimberly Ruht, Attorney
Legal Division
23 Arizona Corporation Commission
1200 West Washington
24 Phoenix, Arizona 85007

Steve Olea, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Jay L. Shapiro
Todd C. Wiley
Fennemore Craig, PC
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012

William P. Sullivan
Larry K. Udall
Curtis Goodwin Sullivan Udall
& Schwab, PLC
501 East Thomas Road
Phoenix, AZ 85012-3205

1 Craig Marks
2 Craig A. Marks, PLC
10645 N. Tatum Blvd.
3 Suite 200-676
Phoenix, Arizona 85028

4 Chad and Jessica Robinson
5 15629 W. Meadowbrook Avenue
Goodyear, AZ 85395

6 Martin A. Aronson
7 Robert J. Moon
Morrill & Aronson, PLC
8 One East Camelback Road, Suite 340
Phoenix, AZ 85012

9 Peter Gerstman
10 Executive Vice-President, Gen. Counsel
Robson Communities
11 9532 East Riggs Road
Sun Lakes, AZ 85248

12
13
14 By _____
Ernestine Gamble

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24